



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 31, 1996

Mr. Richard C. Terrell
Attorney at Law
P.O. Box 1621
Alice, Texas 78333

OR96-1338

Dear Mr. Terrell:

The City of Alice (the "city") received a written request for certain information in the requestor's personnel file from the Alice Police Department. You raise no exceptions under the Texas Open Records Act (the "act"), chapter 552 of the Government Code, but claim that the requested information is excepted from required public disclosure because it contains confidential attorney-client communications, attorney work product, and "discussions concerning [the requestor's] asserted claim against the [c]ity." You also claim that the city is "not required to request an opinion from the Attorney General's office under Government Code 552.301(a)." This matter has been assigned ID# 40581.

We first address your contention that the city is not required to request an opinion from the Attorney General's office under Government Code 552.301(a). An attorney general's opinion must be sought whenever the applicability of a particular exception to particular information has not already been determined. Open Records Decision No. 435 (1986). Where only the *standard* to be applied has been addressed, the *applicability* of the standard to particular information must be determined by the attorney general. *Id.*; *cf. Houston Chronicle Publishing Co. v. Mattox*, 767 S.W.2d 695, 698 (Tex. 1989) (Open Records Act does not require previous determination on specific piece of information previously determined to be public; *attorney general* has discretion to determine when previous determination has been made regarding category of information to which request belongs); *see Rainbow Group, Ltd. v. Texas Employment Comm'n*, 897 S.W.2d 946 (Tex. App.--Austin 1995, writ denied) (holding that because information was *per se* confidential by statute, governmental body was not required to seek ruling from attorney general). This office has consistently held that previous determinations apply only to fungible information; for example, forms or other similar interchangeable types

of information. Information purportedly within the attorney-client privilege and attorney work product is not fungible but must be reviewed by this office on a case-by-case basis. Therefore, the city is required to seek an opinion on this type of information.

Despite your assertion that you are not required to request an opinion, we note that you submitted to this office for review certain documents from the requestor's personnel file which you claim "were not produced" to the requestor. We assume, therefore, that you are, in fact, seeking a ruling from this office regarding these records.

Specifically, the requestor seeks the following:

- 1) any and all disciplinary actions taken against the requestor;
- 2) any and all citizen complaints against the requestor and their outcome; and
- 3) any and all departmental investigations against the requestor and their outcome.¹

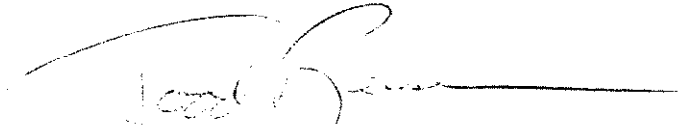
Section 552.301 of the Government Code provides that a governmental body must ask the attorney general for a decision as to whether requested documents must be disclosed not later than the tenth calendar day after the date of receiving the written request. *See also* Open Records Decision Nos. 435 (1986), 319 (1982). The city received the written request for information on or about April 11, 1996. However, you did not request a decision from this office until May 8, 1996, more than ten days after the requestor's written request. Therefore, the city failed to meet its ten-day deadline for requesting an opinion from this office.

When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, *no writ*); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, *no writ*); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.* Normally, a compelling interest is that some other source of law makes the information confidential or that third party interests are at stake. Open Records Decision No. 150 (1977) at 2. As you have raised no exceptions under the act, and as we find that no compelling reasons exist for withholding the information submitted to this office or that some other source of law makes the information confidential, you must release the requested information to the requestor immediately. We caution you that failure to provide access to public information to a requestor may be deemed a civil or criminal violation of chapter 552. *See* Gov't Code §§ 552.321 and 552.353.

¹We note that none of the documents submitted to this office for review appear to be responsive to this request.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal line extending to the right.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 40581

Enclosures: Submitted documents